

REMARKS/ARGUMENTS

Paragraph 1 on page 2 of the Official Action says that the application contains claims directed to the patentably distinct “species” I to IV drawn from respective cited portions of the “Summary of the Invention” of applicants’ specification. Paragraph 2 on page 2 of the Official Action requires Applicant under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Paragraph 3 of the Official Action further says: “Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added.”

In reply, the undersigned understands that “consonant with this requirement” means that to be responsive, applicants must elect a single one of “species” I to IV. With this understanding, applicants elect WITH TRAVERSE “species I drawn from pg. 4, lns. 12 - pg. 5, lns. 15 and pg. 6, lns. 18-pg. 7, lns. 9 of the specification.” A listing of all claims readable thereon is Claims 1-53.

It is respectfully submitted that Claims 1-53 are readable upon “species I” because the applicants assume that the Official Action is identifying “distinguishing characteristics ... stated for each species identified” pursuant to M.P.E.P. 809.02(a) (rev. 3, Aug. 2005, page 800-53) and thus a claim can “read on” the species so long as the claim is not inconsistent with the distinguishing characteristics because claims to be restricted to different species should be mutually exclusive. “[T]o require restriction between claims limited to species, the claims must

not overlap in scope.” (M.P.E.P. 806.04(f), Rev. 3, August 2005, page 800-43.) The applicants’ claims are not mutually exclusive, and instead the applicants’ claims include limitations that are disclosed as used together in a preferred embodiment shown in the drawings and described in the applicants’ specification. The limitations are also claimed as combined together in applicants’ claim 29. Thus, all of applicants’ claims can be read on an embodiment having the distinguishing characteristics of “species I” identified in the Official Action.

Applicants respectfully traverse the “election of species requirement” because it excludes applicants’ preferred embodiment, it may confuse “species” with claims, and it is devoid of any assertion that there would be a “serious burden” if restriction is not required.

For prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable, applicants would like to elect their preferred embodiment disclosed in FIGS. 1 to 35. All of the applicants’ claims 1 to 53 are readable on this preferred embodiment. It is not understood why the Official Action has excluded the applicants’ preferred embodiment from the “species” that are selectable “in consonance with” the restriction requirement.

The Official Action seems to confuse species with claims by referring to “species” drawn from particular passages in the applicants’ “SUMMARY OF THE INVENTION” instead of requiring restriction to separate and distinct inventions specified by groups of claims corresponding to these passages. For example, pg. 4, lns. 12 - pg. 5, lns. 15 and pg. 6, lns. 18-pg. 7, lns. 9 of the specification” cited with respect to “species I” contains three paragraphs, which are restatements of applicants’ claims 30, 35, and 42. In a typical restriction requirement for a

patent application having multiple independent claims per category (e.g., apparatus or method), all of the claims are grouped and reasons are given why each group is considered to define a separate and distinct invention.

“Claims are definitions of inventions. *Claims are never species. ... Species are always the specifically different embodiments.*” (M.P.E.P. 806.04(e), Rev. 3, August 2005, page 800-43, emphases in the original.)

Restriction is a general term including the practice of requiring an election of a single claimed invention such as an election between a combination or subcombination or an election of species. (See M.P.E.P. 802.02, Rev. 3, Aug. 2005, page 800-2.) If a search and examination of all of the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions. (M.P.E.P. 803, Rev. 3, August 2005, page 800-4.) Here the Official Action is devoid of any assertion that there would be a “serious burden” if restriction is not required. The Official Action asserts that the “species I-IV” are “independent or distinct,” but the distinguishing characteristics identified in the Official Action are used together in the applicants’ preferred embodiment (and claimed together for example in applicants’ claim 29), so the “species I-IV” are not independent. Nor has the Official Action asserted that the distinguishing characteristics are found in different search classifications.

In view of the above, reconsideration is respectfully requested, and early allowance is earnestly solicited.

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Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Richard C. Auchterlonie".

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